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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,766	10/02/2000	Albrecht Dorschner	Beiersdorf 657-KGR	5682

7590 08/01/2003  
NORRIS MCLAUGHLIN & MARCUS, P.A.  
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NEW YORK, NY 10017

EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 08/01/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/678,766

Applicant(s)

DORSCHNER ET AL.

Examiner

Sharmila S. Gollamudi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 4-23 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) 24-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-23 and 26-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of Application***

Receipt of Request for Reconsideration and Amendment B received on May 21, 2003 is acknowledged. Claims **4-23 and 26-29** are included in the prosecution of this application. As set forth in Paper No. 9, Office Action, claims 24-25 are withdrawn from prosecution.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 4-23 and 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Robinson et al (5,603,923).**

Robinson et al disclose an artificial tanning oil-in-water emulsion containing an aqueous phase, an oil phase, 1% steareth-20, polysorbate 60, glyceryl stearate, and 3% dihydroxyacetone. See example IV-VI. Example VII-IX teaches 0.45% cetareth-20. The oil and water phase contain other soluble substances.

**Claims 4-23 and 26-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Alban et al (5,318,774).**

Alban et al disclose a tanning o/w emulsion containing an aqueous phase, and oil phase, 0.50% cetareth-12 and 0.05% cetareth-20, and 3% dihydroxyacetone. See example IV. The oil and water phase contain other soluble substance.

**Claims 4-23 are rejected under 35 U.S.C. 102(b) as being anticipate by Ascione et al (5858334).**

Ascione et al disclose oil-in-water ultra-fine emulsions containing dihydroxyacetone. The cosmetic composition contains 3.3% cetylstearyl alcohol containing ethylene oxide and 5% dihydroxyacetone (see example 1 and col. 3 and 4, beginning on line 55). The oil and water phase contain other soluble substances.

***Response to Arguments***

Applicant argues that Ascione does not teach instant emulsifier A and cannot anticipate instant invention.

Applicant's arguments have been fully considered but they are not persuasive. It is the examiner's position that Ascione teaches emulsifier A in example 1 the in instant amounts. Applicant defines emulsifier A as any compound chosen from the list provided on pages 19 and 20 of the instant specification. Fatty alcohol ethoxylates is listed as one of the choices. Therefore, since instant claims do not specify the emulsifier but rather use the term emulsifier A, it is regarded that the emulsifier list provided in the specification has the instant properties and falls within the criteria set forth by the applicant. Ascione in example 1 teaches a fatty alcohol ethoxylate, cetylstearyl alcohol containing ethylene oxide as the nonionic emulsified, in an oil-in-water emulsion. Further, the examiner points to column 4, lines 40-63. Lastly, it is pointed out that fatty alcohol ethoxylates are obtained by reacting the alcohol and ethylene oxide.

***Correspondence***

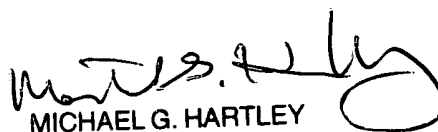
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SSG

July 28, 2003

  
MICHAEL G. HARTLEY  
PRIMARY EXAMINER